

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 254

Introduced by Senator Hancock

February 13, 2013

An act to add Chapter 21 (commencing with Section 42985) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 254, as amended, Hancock. Solid waste: used mattresses: recycling and recovery.

(1) Existing law requires a retailer of various specified products, such as rechargeable batteries and ~~cell phones~~ *cellular telephones*, sold in the state to have in place a system for the acceptance and collection of those products for reuse, recycling, or proper disposal.

This bill would establish the Used Mattress Recovery and Recycling Act and would define terms for purposes of the act. The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to provide in an electronic format an interim plan to the Department of Resources Recycling and Recovery by April 1, 2014, that ensures that the manufacturer will be responsible for the collection and recycling of used mattresses generated by consumers. The bill would require a manufacturer to implement the interim plan by July 1, 2014, and to continue implementation until a mattress stewardship plan is approved, conditionally approved, or disapproved by the department.

The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to submit a mattress stewardship plan to the department by April 1, 2015. The bill would specify the requirements to be included in the plan,

including meeting specified recycling goals. The bill would specify a procedure for the department's approval, disapproval, or conditional approval of a plan.

The bill would require a retailer of mattresses on and after July 1, 2014, to offer the consumer the option of picking up a used mattress, at the time a new mattress is delivered to the consumer, at no additional cost to the consumer.

The bill would prohibit a manufacturer or retailer from selling or offering for sale a mattress to any person in this state unless the manufacturer is in compliance with the act and would prohibit a manufacturer from selling a mattress on or after August 1, 2015, if the manufacturer is not covered by an approved or conditionally approved plan. The bill would require the department, by August 1, 2015, except as specified, and by July 1 annually thereafter, to post on its Internet Web site a listing of manufacturers that have submitted a plan and to annually post a listing of manufacturers in compliance with the act. The bill would require retailers that distribute or sell mattresses to monitor the department's Internet Web site to determine if the manufacturer of a mattress is in compliance with the requirements of the act.

The bill would require a manufacturer, individually, collectively, or through a stewardship organization, to submit an annual report to the department describing its mattress stewardship efforts. The bill would require the department to review the annual report within 90 days of receipt and adopt a finding of compliance or noncompliance with the requirements of the act. The bill would authorize the department to require a manufacturer or stewardship organization submitting that annual report that is not meeting the act's requirements, to amend and resubmit the plan and would require the department to remove the manufacturer's name from the listing of manufacturers that are in compliance, until as specified.

The bill would require recyclers and renovators, as defined, to submit an annual report to the department regarding mattresses received and recycled and would require the operator of a solid waste facility to submit an annual report to the department regarding the number of used mattresses received and designated for recycling or renovation in the state during the preceding calendar year.

The bill would authorize the department to require a manufacturer to pay the department a quarterly administrative fee, as determined by the department.

The bill would require these fees to be deposited into the Mattress Recovery and Recycling Account, which the bill would establish in the Integrated Waste Management Fund. The bill would provide that the moneys in the account would be available for expenditure by the department, upon appropriation by the Legislature.

The bill would require a manufacturer or stewardship organization to provide the department with reasonable and timely access, as determined by the department, to its facilities or operations, and to provide the department with any relevant records. The bill would require the records to be maintained and accessible for 3 years. The bill would require all reports and records to be provided to the department under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime.

The bill would allow the department to impose an administrative civil penalty in specified amounts on a manufacturer, stewardship organization, or retailer ~~who~~ that is in violation of the act. The bill would require the department to deposit all penalties collected into the Mattress Recovery and Recycling Penalty Account, which the bill would establish in the Integrated Waste Management Fund. The bill would provide that the moneys in the penalty account would be available for expenditure by the department, upon appropriation by the Legislature. The bill would also authorize the department to take other actions to enforce the act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 21 (commencing with Section 42985)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

1 CHAPTER 21. USED MATTRESS RECOVERY AND RECYCLING ACT

2
3 42985. (a) The Legislature finds and declares all of the
4 following:

5 (1) In order to reduce illegal dumping, increase recycling, and
6 substantially reduce public agency costs for the end-of-life
7 management of used mattresses, the Used Mattress Recovery and
8 Recycling Act is hereby established by this chapter to require
9 manufacturers of mattresses sold in this state to develop, finance,
10 and implement a convenient and cost-effective program to collect,
11 reuse where possible, and recycle used mattresses generated in
12 this state.

13 (2) Consistent with existing state policy, the program developed
14 and implemented by manufacturers of mattresses sold in this state
15 shall be capable of the recovery and recycling of at least 75 percent
16 of used mattresses generated in this state annually on and after
17 January 1, 2020.

18 (b) This chapter shall be known, and may be cited, as the Used
19 Mattress Recovery and Recycling Act.

20 (c) This chapter does not prohibit a manufacturer from
21 internalizing the cost of implementing this chapter.

22 42986. For the purposes of this chapter, the following terms
23 have the following meanings:

24 (a) “Account” means the Mattress Recovery and Recycling
25 Account established pursuant to Section 42995.

26 (b) “Common carrier” has the same meaning as defined in
27 Section 2168 of the Civil Code.

28 (c) “Consumer” means an owner of a mattress, including a
29 person, business, corporation, limited partnership, nonprofit
30 organization, or governmental entity.

31 (d) “Interim plan” means a plan provided to the department
32 pursuant to Section 42987.

33 (e) (1) “Manufacturer” means one of the following persons:

34 (A) A person who manufactures a mattress and who sells, offers
35 for sale, or distributes the mattress in the state under that person’s
36 own name or brand.

37 (B) If there is no person who is a manufacturer of the mattress
38 for the purpose of subparagraph (A), the manufacturer is the person
39 named on the label pursuant to Section 1633.12 of Title 16 of the
40 Code of Federal Regulations.

1 (2) A retailer whose name or brand may be on a mattress is not
2 the manufacturer of the mattress, unless the retailer actually made,
3 produced, and assembled that product.

4 (f) (1) “Mattress” means any resilient material or combination
5 of materials that is enclosed by a twin size or larger mattress
6 ticking, used alone or in combination with other products, and that
7 is intended for or promoted for sleeping upon.

8 (2) “Mattress” includes any foundation and any renovation.

9 (3) “Mattress” does not include an unattached mattress pad,
10 unattached mattress topper, sleeping bag, pillow, car bed, carriage,
11 basket, dressing table, stroller, playpen, infant carrier, lounge pad,
12 crib bumper, liquid and gaseous filled ticking including any water
13 bed and air mattress that does not contain upholstery material
14 between the ticking and the mattress core, and upholstered furniture
15 that does not otherwise contain a detachable mattress.

16 (g) “Mattress stewardship plan” or “plan” means a plan
17 submitted to the department pursuant to Section 42988.

18 (h) “Recycle” or “recycling” has the same meaning as defined
19 in Section 40180. For the purposes of this chapter renovation shall
20 be considered recycling.

21 (i) “Recycler” means a person that engages in the manual or
22 mechanical separation of mattresses to substantially recover
23 components and commodities contained in the mattresses for the
24 purpose of reuse or recycling.

25 (j) (1) “Renovate” or “renovation” means altering a mattress
26 for the purpose of resale and includes any one, or a combination
27 of, the following:

28 (A) Replacing the mattress ticking or filling.

29 (B) Adding additional filling.

30 (C) Rebuilding a mattress.

31 (D) Replacing components with new or recycled materials.

32 (2) “Renovate” or “renovation” does not include any of the
33 following:

34 (A) Stripping of a mattress of its ticking or filling without adding
35 new material.

36 (B) Sterilizing or sanitizing a mattress without otherwise altering
37 the mattress.

38 (C) Altering a mattress by a renovator when a person retains
39 the altered mattress for lease, rental, or personal use.

1 (D) Refurbishing that disqualifies a mattress for a yellow
2 wholesale renovator tag to be affixed to the mattress, in accordance
3 with the regulations adopted by the Department of Consumer
4 Affairs.

5 (k) “Renovator” means a person that renovates used mattresses.

6 (l) “Retailer” means a person who sells mattresses in the state
7 or offers to consumers mattresses in the state through any means,
8 including, but not limited to, by remote offering such as sales
9 outlets or catalogs.

10 (m) “Stewardship organization” means a nonprofit organization
11 created by one or more manufacturers to act on behalf of the
12 manufacturer to provide an interim plan to the department pursuant
13 to Section 42987 or to design, submit, and implement a mattress
14 stewardship plan pursuant to Section 42988.

15 (n) “Used mattress” means a mattress that is no longer used for
16 its manufactured purpose.

17 (o) “Voucher” means a promise to a consumer of a new mattress
18 to provide that consumer with a future, no cost take back of a used
19 mattress for recycling, as described in this chapter. The voucher
20 may include a payment, coupon, chit, or other form of paper or
21 electronic authorization that enables the consumer to drop off a
22 used mattress for recycling at any recycling facility or solid waste
23 facility at no cost to the consumer, and ~~which~~ *that* the operator of
24 the facility can then redeem from a manufacturer or the
25 manufacturer’s agent in order to cover the cost of recovery and
26 recycling.

27 42987. (a) On or before April 1, 2014, a manufacturer of
28 mattresses sold in this state shall, individually, collectively, or
29 through a stewardship organization, provide an interim plan to the
30 department in an electronic format.

31 (b) The interim plan shall ensure that the manufacturer will be
32 responsible for the collection and recycling of used mattresses
33 generated by consumers. The interim plan shall include a
34 description of activities that the manufacturer shall undertake as
35 part of the plan and shall require the manufacturer to do all of the
36 following:

37 (1) Ensure that when a new mattress is delivered to a consumer
38 by a retailer, the consumer is given the option of having a used
39 mattress picked up for recycling at the time of delivery, at no

1 additional cost to the consumer or retailer. A retailer may contract
2 out to a third-party entity for the pickup of used mattresses.

3 (2) Ensure that when a new mattress is purchased and picked
4 up by a consumer, the consumer is given a voucher that provides
5 for the dropoff and recycling of a used mattress at a local solid
6 waste or recycling facility at no additional cost to the consumer,
7 retailer, or facility.

8 (3) Otherwise provide consumers with convenient opportunities
9 to properly dispose of their used mattresses.

10 (c) The department shall post the interim plan provided pursuant
11 to this section on its Internet Web site.

12 (d) On and after July 1, 2014, a manufacturer shall implement
13 the interim plan provided pursuant to subdivision (a) and shall
14 continue implementation of the interim plan until the mattress
15 stewardship plan required by Section 42988 is approved,
16 conditionally approved, or disapproved by the department pursuant
17 to Section 42989.

18 (e) A manufacturer shall provide retailers with relevant materials
19 60 days prior to implementation of the interim plan.

20 42988. (a) On or before April 1, 2015, a manufacturer shall,
21 individually, collectively, or ~~through~~ *through* a mattress stewardship
22 organization, submit a mattress stewardship plan to the department
23 that meets the requirements of this section.

24 (b) A mattress stewardship plan submitted pursuant to this
25 section shall include all of the following elements:

26 (1) Program activities to achieve the used mattress recycling
27 goals established in subdivision (c).

28 (2) Existing and planned used mattress take-back sites or
29 collection locations, including estimated timelines for any planned
30 expansion, if applicable.

31 (3) Program objectives consistent with the state's solid waste
32 management hierarchy.

33 (4) Ensure that local governments and solid waste facilities are
34 provided with a mechanism for the recovery of illegally dumped
35 used mattresses at no additional cost to the local government or
36 solid waste facility.

37 (5) Arrangements for the pickup of used mattresses that have
38 been accepted at solid waste facilities and for the delivery of those
39 used mattresses to a recycling or refurbishment facility.

1 (6) A program performance measurement that would collect
2 program data for purposes of the report required by Section 42991,
3 in accordance with the following:

4 (A) If the department does not provide a methodology for the
5 program performance methodology pursuant to subdivision (e) of
6 Section 42991, the plan shall include a methodology for estimating,
7 with regard to the manufacturers covered by the plan, the amount
8 of mattresses sold in the state and the used mattresses available
9 for collection in the state, and for quantifying the number of used
10 mattresses collected and recycled in the state.

11 (B) The program plan performance measurement may aggregate
12 the total number of mattresses sold and recycled by all participating
13 members in a plan submitted by manufacturers acting collectively
14 or through a stewardship organization.

15 *(7) The establishment of a financial incentive to encourage*
16 *parties to collect used mattresses that are discarded or illegally*
17 *dumped in the state for recycling.*

18 ~~(7)~~

19 (8) Education and outreach efforts to consumers and other
20 individuals within the supply chain to promote their participation
21 in achieving the purposes of the plan.

22 ~~(8)~~

23 (9) A consultation process with affected stakeholders.

24 ~~(9)~~

25 (10) The names of manufacturers and brands covered under the
26 plan.

27 ~~(10)~~

28 (11) Procedures to ensure implementation of the plan if the
29 manufacturer or the stewardship organization no longer exists due
30 to bankruptcy, dissolution, or similar processes.

31 ~~(11)~~

32 (12) Reimbursement of solid waste facilities for the reasonable
33 costs of collecting, storing, and processing used mattresses in the
34 implementation of the plan pursuant to this chapter.

35 ~~(12)~~

36 (13) Policies to ensure there are adequate and convenient
37 opportunities for the collection, acceptance, and recovery for
38 recycling of used mattresses in low-income communities, in
39 accordance with the poverty line annually established by the
40 Secretary of California Health and Human Services pursuant to

1 the federal Omnibus Budget Reconciliation Act of 1981 (Public
2 Law 97-35), as amended.

3 ~~(13)~~

4 (14) Strategies to give priority to recycling facilities that are the
5 closest to the consumer or retailers.

6 ~~(14)~~

7 (15) A program to ensure that used mattresses recovered by a
8 retailer pursuant to Section 42990 are delivered to a recycling
9 facility or solid waste facility for recycling. A manufacturer or
10 retailer may contract out to a third-party entity for the transportation
11 of used mattresses to such a facility.

12 ~~(15)~~

13 (16) As an alternative to the requirements of paragraph ~~(14)~~
14 ~~(15)~~, a requirement that the manufacturer provide a retailer with
15 extra vouchers to provide to a consumer if, when picking up a
16 consumer's mattress upon the purchase of a new mattress, the
17 mattress is infested with a pest or contaminated so that it poses a
18 contamination risk to personnel, new products, or equipment. These
19 vouchers shall be provided at no additional cost to the consumer,
20 retailer, recycling facility, or solid waste facility.

21 ~~(16)~~

22 (17) Any other information deemed necessary by the department
23 related to compliance with the plan.

24 (c) The plan shall meet the *following goals, consistent with the*
25 *portion of the used mattress recycling goals, for to which a*
26 *manufacturer, individually or collectively, submitting the plan, or*
27 *by the manufacturers included in a plan submitted by a stewardship*
28 *organization, are subject to, pursuant to the methodology specified*
29 *in the plan pursuant to paragraph (6) of subdivision (b):*

30 (1) On and after January 1, 2015, recycle not less than 25 percent
31 of used mattresses generated by consumers in the state from the
32 manufacturers included in the plan.

33 (2) On and after January 1, 2017, recycle not less than 50 percent
34 of used mattresses generated by consumers in the state from the
35 manufacturers included in the plan.

36 (3) On and after January 1, 2020, recycle not less than 75 percent
37 of used mattresses generated by consumers in the state from the
38 manufacturers included in the plan.

39 (d) A manufacturer is deemed to meet the mattress recycling
40 percentile goal specified in subdivision (c) if the plan submitted

1 by the manufacturer, or by the stewardship organization formed
2 or joined by the manufacturer, when implemented, collects an
3 amount of mattresses equal to, or greater than, the equivalent
4 portion of the used mattresses available for collection, as
5 determined pursuant to paragraph (6) of subdivision (b) of the
6 plan.

7 (e) A manufacturer, individually or collectively, or stewardship
8 organization may coordinate with local governments, solid waste
9 facilities, retailers, and mattress recyclers to achieve the purposes
10 of this chapter.

11 (f) The plan shall not require the funding for the plan to be
12 collected from a consumer at the point of collection or discard.

13 (g) *This section does not prohibit either of the following:*

14 (1) *A manufacturer from internalizing the costs of implementing*
15 *this chapter.*

16 (2) *A manufacturer from voluntarily establishing a charge to*
17 *be added to the purchase price of a mattress to reimburse the*
18 *manufacturer for the costs of implementing this chapter.*

19 42989. (a) The department shall review the plan submitted
20 pursuant to Section 42988 and within 90 days of receipt shall
21 approve, disapprove, or conditionally approve the plan.

22 (b) If the department disapproves the plan pursuant to
23 subdivision (a), the manufacturer or stewardship organization shall
24 resubmit the plan to the department. If the manufacturer or
25 stewardship organization does not resubmit a plan, or submits a
26 plan that is not approved or conditionally approved by the
27 department, the department shall remove all manufacturers covered
28 by the plan from the department's Internet Web site pursuant to
29 Section 42992, and a manufacturer so removed from the Internet
30 Web site shall not sell a mattresses in the state until the department
31 approves a plan for that manufacturer.

32 (c) The approved plan shall be a public record, except that
33 financial, production, or sales data reported to the department by
34 a manufacturer or the stewardship organization is not a public
35 record for purposes of the California Public Records Act (Chapter
36 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
37 the Government Code) and shall not be open to public inspection.
38 The department may release financial, production, or sales data in
39 summary form only that cannot be attributable to a specific
40 manufacturer.

1 42990. (a) On and after July 1, 2014, a retailer shall offer a
2 consumer the option to have a used mattress picked up for recovery
3 at the time of delivery, at no additional cost to the consumer, if a
4 new mattress is delivered to the consumer.

5 (1) A retailer may contract out to a third-party entity for the
6 pickup of used mattresses.

7 (2) This chapter does not require a common carrier delivering
8 a new mattress to a consumer on behalf of a retailer to pick up a
9 used mattress for recovery.

10 (3) If a new mattress is delivered to a consumer by a common
11 carrier, the manufacturer shall provide the consumer the option of
12 having a used mattress picked up for recovery through a voucher
13 or another mechanism, at no additional cost to the consumer.

14 (b) This chapter does not prohibit a retailer from charging a
15 consumer an additional cost for the delivery of a new mattress.

16 42991. (a) On or before April 1, 2016, and each year thereafter,
17 a manufacturer shall, individually, collectively, or through a
18 stewardship organization, submit a report to the department
19 describing the mattress stewardship efforts taken pursuant to the
20 approved or conditionally approved plan, in the form and manner
21 that the department may prescribe.

22 (b) The department shall review the annual report required
23 pursuant to this section and within 90 days of receipt shall adopt
24 a finding of compliance or noncompliance with this chapter.

25 (c) If the department adopts a finding of noncompliance pursuant
26 to subdivision (b), the department may require the manufacturer
27 or stewardship organization to amend and resubmit the plan within
28 90 days of the department's determination.

29 (d) If the manufacturer or stewardship organization does not
30 resubmit the plan pursuant to subdivision (c), or the department
31 does not approve or conditionally approve the plan submitted to
32 subdivision (c), the department shall post a notice of
33 noncompliance pursuant to Section 42992 and the manufacturers
34 subject to the plan shall not sell a mattress in the state until the
35 department approves a plan.

36 (e) The department may adopt a uniform methodology that shall
37 be used by all manufacturers for purposes of estimating the amount
38 of mattresses sold in the state and the number of used mattresses
39 available for collection in the state, and for quantifying the number
40 of used mattresses collected and recycled in the state.

1 42992. (a) A manufacturer or retailer shall not sell or offer for
2 sale a mattress to any person in this state unless the manufacturer
3 is in compliance with this chapter.

4 (b) (1) On or after August 1, 2015, if a manufacturer is not
5 covered by an approved or conditionally approved plan, the
6 manufacturer shall not sell or offer for sale a mattress in the state.

7 (2) A manufacturer is a covered manufacturer if the
8 manufacturer has submitted a plan, either individually, collectively,
9 or through a stewardship organization, to the department pursuant
10 to Section 42988.

11 (c) (1) On August 1, 2015, or upon the date the plan is approved
12 or conditionally approved by the department, whichever date comes
13 first, and on or before July 1 annually thereafter, the department
14 shall post on its Internet Web site a list of manufacturers for which
15 the department has approved or conditionally approved the plan
16 pursuant to Section 42989.

17 (2) On July 1, 2016, and annually thereafter, the department
18 shall post on its Internet Web site a list of manufacturers for which
19 the department has adopted a finding of compliance with regard
20 to the report filed pursuant to subdivision (b) of Section 42991.

21 (3) A manufacturer that is not listed on the department's Internet
22 Web site pursuant to this section, but demonstrates to the
23 satisfaction of the department that it is in compliance with this
24 chapter before the next notice is required to be posted pursuant to
25 this section, may request a certification letter from the department
26 stating that the manufacturer is in compliance. The manufacturer
27 that receives that letter shall be deemed to be in compliance with
28 this chapter.

29 (4) A retailer that distributes or sells a mattress shall monitor
30 the department's Internet Web site to determine if a manufacturer
31 is a covered manufacturer or is in compliance with this chapter.
32 A retailer otherwise in compliance with this chapter shall be
33 deemed in compliance with subdivision (a) if, on the date the
34 retailer ordered or purchased a mattress, or within five calendar
35 days after that date, the manufacturer was listed as covered or
36 compliant on the department's Internet Web site.

37 (5) A retailer may exhaust existing stock in its inventory through
38 sales to the public if the existing stock was purchased when the
39 manufacturer was in compliance with the requirements of this
40 chapter at the time of the existing stock's initial purchase.

(d) If the department determines that a manufacturer or stewardship organization is not in compliance with this chapter, the department shall remove the manufacturer or the manufacturers covered by the plan submitted by the stewardship organization from the department's Internet Web site pursuant to this section and the manufacturer shall not sell a mattresses in the state until the department determines that the manufacturer is in compliance with this chapter.

42993. (a) On or before April 1, 2016, and each year thereafter, a person that is engaged in business as a recycler shall submit a report to the department that includes, but is not limited to, both of the following:

(1) Quantitative information on the number of mattresses received and recycled or renovated in the state during the preceding calendar year.

(2) Quantitative information on the number of vouchers received from customers in the state in the preceding calendar year, if applicable.

(b) On or before April 1, 2016, and each year thereafter, a person who renovates used mattresses shall submit a report to the department, that at a minimum, includes both of the following:

(1) Quantitative information on the number of mattresses received and recycled or renovated in California during the preceding calendar year.

(2) Quantitative information on the number of vouchers received from customers in California in the preceding calendar year, if applicable.

(c) For purposes of determining the recycling rate for a used mattress, on or before April 1, 2016, and each year thereafter, a solid waste landfill facility operator shall report to the department, in a form and manner determined by the department, regarding the number of used mattresses received and designated for recycling or renovation within the state in the preceding calendar year.

42994. (a) A manufacturer and a mattress stewardship organization shall do all of the following:

(1) Upon request, provide the department with reasonable and timely access, as determined by the department and as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part

1 3 of the Code of Civil Procedure, to its facilities and operations,
2 as necessary to determine compliance with this chapter.

3 (2) Upon request, provide the department with relevant records
4 necessary to determine compliance with this chapter.

5 (3) If a manufacturer or the stewardship organization does not
6 comply with the department's request made pursuant to paragraph
7 (1) or (2), it shall provide the department with a complete
8 explanation for its inability or decision not to comply with that
9 request.

10 (b) The records required by this chapter shall be maintained and
11 accessible for three years. All reports and records provided to the
12 department pursuant to this chapter shall be provided under penalty
13 of perjury.

14 (c) The department may take disciplinary action against a
15 manufacturer if the stewardship organization or manufacturer fails
16 to provide the department with the access required pursuant to this
17 section, including, but not limited to, imposing penalties pursuant
18 to Section 42996 and posting an immediate notice on the
19 department's Internet Web site pursuant to Section 42292 that the
20 manufacturer is no longer in compliance with this chapter.

21 42995. (a) The department may require a manufacturer to pay
22 the department a quarterly administrative fee, as determined by
23 the department.

24 (b) If the department elects to impose an administrative fee, the
25 amount of the administrative fees imposed pursuant to subdivision
26 (a) shall be established by the department in an amount that is
27 sufficient to meet, but that does not exceed, the department's full
28 costs of administering and enforcing this chapter, including any
29 program development costs or regulatory costs incurred by the
30 department prior to the submittal of the plan required by Section
31 42988.

32 (c) The administrative fees collected pursuant to this section
33 shall be deposited into the Mattress Recovery and Recycling
34 Account, which is hereby established in the Integrated Waste
35 Management Fund. Upon appropriation by the Legislature, moneys
36 in the account shall be expended by the department to administer
37 and enforce this chapter. The fees collected pursuant to this section
38 shall not be expended for any other purpose.

39 42996. (a) The department may impose an administrative civil
40 penalty on any manufacturer or stewardship organization that is

1 in violation of this chapter. The amount of the civil penalty shall
2 not exceed five hundred dollars (\$500) per day, but if the violation
3 is intentional, knowing, or reckless, the department may impose
4 a civil penalty of not more than five thousand dollars (\$5,000) per
5 day.

6 (b) The department may impose an administrative civil penalty
7 on any retailer who is in violation of this chapter. The amount of
8 the civil penalty shall not exceed five hundred dollars (\$500) per
9 day, but if the violation is intentional, knowing, or reckless the
10 department may impose a civil penalty of not more than five
11 thousand dollars (\$5,000) per day.

12 (c) In assessing or reviewing the amount of a civil penalty
13 imposed pursuant to subdivision (a) or (b) for a violation of this
14 chapter, the department or the court shall consider all of the
15 following:

16 (1) The nature and extent of the violation.
17 (2) The number and severity of the violation or violations.
18 (3) The economic effect of the penalty on the violator.
19 (4) Whether the violator took good faith measures to comply
20 with this chapter and the period of time over which these measures
21 were taken.

22 (5) The willfulness of the violator's misconduct.
23 (6) The deterrent effect that the imposition of the penalty would
24 have on both the violator and the regulated community.

25 (7) Any other factor that justice may require.

26 (d) If more than one stewardship organization submits a plan
27 pursuant to this chapter, the department shall determine the
28 manufacturer's or retailer's compliance with this chapter in
29 accordance with the plan to which the manufacturer or retailer is
30 subject.

31 (e) The department may impose the administrative civil penalties
32 pursuant to this section in accordance with Chapter 5 (commencing
33 with Section 11500) of Part 1 of Division 3 of Title 2 of the
34 Government Code, except that subdivision (c) of Section 11505
35 of the Government Code shall not apply to the department.

36 (f) The department shall not impose a penalty upon a mattress
37 stewardship organization pursuant to this section for a failure to
38 comply with this chapter as a result of submitting false or
39 misleading information if the stewardship organization
40 demonstrates that it received false or misleading information from

1 a manufacturer that was the direct cause of its failure to comply
2 with this chapter.

3 (g) The department shall deposit all penalties collected pursuant
4 to this section into the Mattress Recovery and Recycling Penalty
5 Account, which is hereby created in the Integrated Waste
6 Management Fund. Upon appropriation by the Legislature, moneys
7 deposited into the Mattress Recovery and Recycling Penalty
8 Account may be expended by the department to implement this
9 chapter.

10 42997. Upon a finding that a manufacturer or stewardship
11 organization has not met a requirement of this chapter, in addition
12 to any other penalties authorized under this chapter, the department
13 may take any of *the* following actions to ensure compliance with
14 the requirements of this chapter:

15 (a) Revoke the manufacturer's or stewardship organization's
16 plan approval, amend an approval or conditional approval to
17 include new conditions, or require the manufacturer or stewardship
18 organization to resubmit the plan.

19 (b) Remove the manufacturer from the department's Internet
20 Web site and list of compliant manufacturers, as specified in
21 subdivision (d) of Section 42992.

22 (c) As a condition for approval of plans submitted by the
23 manufacturer or stewardship organization pursuant to Section
24 42989 after the date of the department's finding, require additional
25 reporting not otherwise required under this chapter, at a frequency
26 determined by the department.

27 42998. (a) Except as provided in subdivision (c), an action
28 specified in subdivision (b) that is taken by a stewardship
29 organization or its members is not a violation of the Cartwright
30 Act (Chapter 2 (commencing with Section 16700) of Part 2 of
31 Division 7 of the Business and Professions Code), the Unfair
32 Practices Act (Chapter 4 (commencing with Section 17000) of
33 Part 2 of Division 7 of the Business and Professions Code), or the
34 Unfair Competition Law (Chapter 5 (commencing with Section
35 17200) of Part 2 of Division 7 of the Business and Professions
36 Code).

37 (b) Subdivision (a) shall apply to all of the following actions
38 taken by the stewardship organization or a manufacturer:

39 (1) The creation, implementation, or management of an interim
40 plan provided to the department pursuant to Section 42987 or of

1 a plan approved by the department pursuant to Section 42989 and
2 the types or quantities of used mattresses recycled or otherwise
3 managed pursuant to the plan, as described in Section 42988.

4 (2) The cost and structure of an approved plan.

5 (3) The establishment, administration, or disbursement of the
6 costs associated with funding the implementation of this chapter.

7 (c) Subdivision (a) does not apply to an agreement that does
8 any of the following:

9 (1) Fixes a price of or for mattresses, except for an agreement
10 related to costs associated with participation in a plan approved
11 or conditionally approved by the department and otherwise in
12 accordance with this chapter.

13 (2) Fixes the output of production of mattresses.

14 (3) Restricts the geographic area in which, or customers to
15 whom, mattresses will be sold.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.